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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,252

12/01/2003

Martin von Werder

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7590

06/07/2006

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EXAMINER

LUONG, VINH

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/725,252

Applicant(s)

WERDER, MARTIN VON

Examiner

Vinh T. Luong

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.


## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Vinh T. Luong  
Primary Examiner

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

2. The information disclosure statement filed on December 1, 2003, which is incorporated into the specification, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

3. The information disclosure statement filed on December 1, 2003, which is incorporated into the specification, fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

4. The drawings are objected to because of the reasons, *inter alia*, listed below:

(a) The drawings do not comply with 37 CFR 1.84. See Form PTO-948 attached;

(b) Each part of the invention, *e.g.*, the support for a steerable wheel, the coupling portion, and the coupling mechanism in claim 1 or 14, the common shaft in claim 5, and the tube portion in claim 13 should be designated by a referential numeral or character; and

(c) The drawings are inconsistent with the specification. For example, paragraph [0028] of the specification describes the curvature of portions 38, 30, however, Fig. 3 shows the curvatures of portions 38 and 40.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features, such as, the support for the steerable wheel in claim 1, and the first and second positions in claim 14 must be shown or the features canceled from the claim(s). *No new matter should be entered.*

The moved positions, such as, the first and second positions in claim 14 are required to be shown in accordance with 37 CFR 1.84(h)(4).

6. The disclosure is objected to because of the following informalities, *e.g.*, listed below:

(a) Each part of the invention, *e.g.*, the support for a steerable wheel, the coupling portion, and the coupling mechanism in claim 1 or 14, the common shaft in claim 5, and the tube portion in claim 13 should be designated by a referential numeral or character; and

(b) The specification is inconsistent with the drawings. For example, paragraph [0028] of the specification describes the curvature of portions 38, 30, however, Fig. 3 shows the curvature of portions 38 and 40.

Appropriate correction is required.

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter, such as, the first, second, and third levers. Applicant is respectfully urged to use the same terminology in the specification and the claims. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction is required.

8. Claims 1-13 are objected to because of the following informalities: no antecedent basis is seen for the term, such as, "it" in claims 1 and 3. Appropriate correction is required.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, (a) the recitation “each operating levers” (plural, emphasis) in claim 1 should have been changed to “each operating lever”; and (b) the recitation “and the catch *or* the locking and/or unlocking lever (80) *are* biased by a spring (84)” in the last two lines of claim 14 should have been changed to “the catch *or* the locking and/or unlocking lever (80) *is* biased by a spring (84).”

The terms, such as, “connectable,” “if applicable,” “mountable,” “able to engage,” and “may be actuated” in claim 1 or 14 are vague and indefinite in the sense that things which may be done are not required to be done. For example, in claim 1, the operating device is connectable, but is not structurally required to be connected to the lifting apparatus of the hand pallet truck. See “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), “crimpable” in *Application of Collier*, 158 USPQ 266 (CCPA 1968), “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

The use of alternative expressions “and/or,” “or,” and “optionally,” *etc.* in, *e.g.*, claims 1, 2, 6, 7, 12, and 14 render said claims vague and indefinite.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim

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does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "the mounting places (50, 52) are identically constructed," and the claim also recites "*preferably* arranged symmetrically to the axis of the holding extension," which is the narrower statement of the range/limitation.

It is unclear whether:

(a) a confusing variety of terms, such as, "an operating lever" and "a single operating lever" in claim 2 refers to the same or different things. See MPEP 608.01(o); and

(b) which structures defined the claimed elements, such as "a coupling portion" and "a coupling mechanism" in claim 1. Applicant is respectfully urged to identify each claimed element with reference to the drawings.

It is unclear which structures define the claimed elements, such as, the support for a steerable wheel, the coupling portion, and the coupling mechanism in claim 1 or 14, the common shaft in claim 5, and the tube portion in claim 13. Applicant is respectfully urged to identify each claimed element with reference to the drawings.

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11. Claims 1-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Johansson et al. (toothing 28 and lever 27 in Fig. 5), Kumada (first and second levers 14A and 14B), Schennach (locking detent 12, 13), Goertzen (toothing 66, 67), Bataille (Fig. 3), Trego et al. (Figs. 2 and 3), and Gilliland et al. (Figs. 1-12).

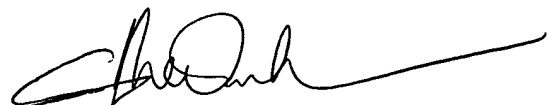
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

June 5, 2006



Vinh T. Luong  
Primary Examiner